

Amendment No. 3 to HB3105

Maddox
Signature of Sponsor

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Date _____

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Comm. Amdt. _____

AMEND Senate Bill No. 2575*

House Bill No. 3105

by deleting all of the language following the enacting clause and substituting instead the following language:

SECTION 1. Tennessee Code Annotated, Title 47, Chapter 18, is amended by adding sections 2 through 6 as a new part 51.

SECTION 2.

§ 47-18-5101. This act shall be known and may be cited as the "Anti-Phishing Act of 2006".

SECTION 3.

§ 47-18-5102. As used in this part, unless the context otherwise requires:

(1) "Ascertainable loss" means an identifiable deprivation, detriment or injury arising from the identity theft or from any unfair, misleading or deceptive act or practice even when the precise amount of the loss is not known. Whenever a violation of this part has occurred, an ascertainable loss shall be presumed to exist;

(2) "Division" means the division of consumer affairs of the department of commerce and insurance;

(3) "Electronic mail message" means a message sent to a unique destination, commonly expressed as a string of characters, consisting of a unique user name or mailbox (commonly referred to as the "local part") and a reference to an internet domain (commonly referred to as the "domain part"), whether or not displayed, to which an electronic message can be sent or delivered;

(4) "Identification documents" means any card, certificate or document which identifies or purports to identify the bearer of such document, whether or not intended for use as identification, and includes, but is not limited to, documents purporting to be a driver license, nondriver identification cards, birth certificates, marriage certificates,

divorce certificates, passports, immigration documents, social security cards, employee identification cards, cards issued by the government to provide benefits of any sort, health care benefit cards, or health benefit organization, insurance company or managed care organization cards for the purpose of identifying a person eligible for services;

(5) "Identifying information" means, with respect to an individual, any of the following:

- (A) Social security number;
- (B) Driver's license number;
- (C) Bank account number;
- (D) Credit card or debit card number;
- (E) Personal identification number (PIN);
- (F) Biometric data;
- (G) Private medical information (PMI);
- (H) Fingerprints;
- (I) Account password; or
- (J) Any other piece of information that can be used to access an individual's financial accounts or obtain identification, act as identification, or obtain goods or services;

(6) "Internet" means the global information system that is logically linked together by a globally unique address space based on the internet protocol (IP), or its subsequent extensions, and that is able to support communications using the transmission control protocol/internet protocol (TCP/IP) suite, or its subsequent extensions, or other IP-compatible protocols, and that provides, uses, or makes accessible, either publicly or privately, high level services layered on communications and related infrastructure;

(7) "Person" means a natural person, consumer, individual, governmental agency, partnership, corporation, trust, estate, incorporated or unincorporated association, and any other legal or commercial entity however organized;

(8) "Tennessee Consumer Protection Act" means the Tennessee Consumer Protection Act of 1977, as amended, as compiled in part 1 of this chapter and related statutes. Related statutes specifically include any statute that indicates within the law, regulation or rule that a violation of that law, regulation or rule is a violation of the Tennessee Consumer Protection Act of 1977. Without limiting the scope of this definition, related statutes include, but are not limited to, the Membership Camping Act as compiled in title 66, chapter 32, part 3; and

(9) "Web page" means a location that has a single uniform resource locator or other single location with respect to the internet.

SECTION 4.

§ 47-18-5103.

(a) It shall be unlawful for any person to represent oneself, either directly or by implication, to be another person, without the authorization or permission of such other person, through the use of the Internet, electronic mail messages or any other electronic means, including wireless communication, and to solicit, request, or take any action to induce a resident of this state to provide identifying information or identification documents.

(b) It shall be unlawful for any person without the authorization or permission of the person who is the subject of the identifying information, with the intent to defraud, for such person's own use or the use of a third person, or to sell or distribute the information to another, to:

(1) Fraudulently obtain, record or access identifying information that would assist in accessing financial resources, obtaining identification documents, or obtaining benefits of such other person;

(2) Obtain goods or services through the use of identifying information of such other person;

(3) Obtain identification documents in such other person's name.

(c) It shall be unlawful for any person with the intent to defraud and without the authorization or permission of the person who is the owner or licensee of a web page or web site to:

(1) Knowingly duplicate or mimic all or any portion of the web site or web page;

(2) Direct or redirect an electronic mail message from the IP address of a person to any other IP address;

(3) Use any trademark, logo, name, or copyright of another person on a web page; or

(4) Create an apparent but false link to a web page of a person which is directed or redirected to a web page or IP address other than that of the person represented.

(d) It shall be unlawful for any person to attempt to commit any of the offenses enumerated in this section.

SECTION 5.

§ 47-18-5104.

(a) The following persons may bring an action against a person who violates or is in violation of § 47-18-5103:

(1) A person who:

(A) Is engaged in the business of providing internet access service to the public, owns a web page, or owns a trademark; and

(B) Suffers ascertainable loss by a violation of § 47-18-5103.

An action brought under this subdivision may seek to recover the greater of actual damages or five hundred thousand dollars (\$500,000).

(2) An individual who suffers an ascertainable loss by a violation of § 47-18-5103 may bring an action, but only against a person who has directly violated § 47-18-5103.

An action brought under this subdivision may seek to enjoin further violations of § 47-18-5103 and to recover the greater of three (3) times the amount of actual damages or five thousand dollars (\$5,000), per violation.

(b) The attorney general or a district attorney may bring an action against a person who violates or is in violation of § 47-18-5103 to enjoin further violations of § 47-18-5103 and to recover a civil penalty of up to two thousand five hundred dollars (\$2,500), per violation.

(c) In an action pursuant to this part, a court may, in addition, do either or both of the following:

(1) Increase the recoverable damages to an amount up to three (3) times the damages otherwise recoverable under subdivision (a) in cases in which the defendant has established a pattern and practice of violating § 47-18-5103; or

(2) Award costs of the suit and reasonable attorney's fees to a prevailing plaintiff.

(d) The remedies provided in this part do not preclude the seeking of remedies, including criminal remedies, under any other applicable provision of the law.

(e) For purposes of subdivision (1) of subsection (a), multiple violations of § 47-18-5103 resulting from any single action or conduct shall constitute one (1) violation.

(f) No provider of an interactive computer service may be held liable under this act or any other provision of state law for identifying, removing, or disabling access to content that resides on an Internet web page or other online location that such provider believes in good faith is used to engage in a violation of this act.

SECTION 6.

§ 47-18-5105.

(a) A violation of this part constitutes a violation of the Tennessee Consumer Protection Act, compiled in part 1 of this chapter.

(b) For the purpose of application of the Tennessee Consumer Protection Act, any violation of the provisions of this part shall be construed to constitute an unfair or

deceptive act or practice affecting trade or commerce and subject to the penalties and remedies as provided in such act, in addition to the penalties and remedies set forth in this part.

(c) If the division has reason to believe that any person has violated any provision of this part, the attorney general and reporter, at the request of the division, may institute a proceeding under this chapter.

SECTION 7. This act shall take effect on July 1, 2006, the public welfare requiring it.